

**Report on H-1B Petitions
1st Quarter
Fiscal Year 2001
October 1, 2000 – December 31, 2000**



U. S. Immigration and Naturalization Service

Report Mandated by Public Law 105-277, Division C, American
Competitiveness and Workforce Improvement Act of 1998

Report on H-1B Petitions

The Immigration Act of 1990 established numerical limitations on the H-1B nonimmigrant classification to provide U.S. employers facilitated access to foreign skilled workers while ensuring worker protections. The cap of [then] 65,000 was reached for the first time in fiscal year 1997 and again in fiscal year 1998 as demand increased significantly in the burgeoning technology sector.

In October 1998, the American Competitiveness and Workforce Improvement Act (ACWIA) was enacted (Public Law 105-277, Division C). The ACWIA temporarily increased the H-1B cap to 115,000 for fiscal years 1999 and 2000 and to 107,500 for fiscal year 2001 while establishing an affirmative role for U.S. employers to assist with education and training efforts. Under ACWIA, an H-1B Nonimmigrant Petitioner Fee account was established to fund training and education programs administered by the Department of Labor and the National Science Foundation. Employers, unless explicitly exempt under the law, were required to pay a \$500 fee for each H-1B worker sponsored. Employers who qualified as an institution or organization described in section 212(p) of the Immigration and Nationality Act (INA) were exempt from payment of this fee. Additionally, the ACWIA imposed quarterly and annual reporting requirements on Immigration and Naturalization Service (INS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data.

The 106th Congress passed two H-1B bills that impacted the H-1B program: enacted as the untitled Public Law 106-311 and Public Law 106-313, the American Competitiveness in the Twenty-First Century Act (AC-21). First, Congress raised the H-1B petitioner fee from \$500 to \$1,000 and exempted additional employers from payment of this fee. The AC-21 temporarily raises the H-1B cap to 195,000 for fiscal years 2001 through 2003 while exempting certain H-1B workers from these numerical limits.

This report is mandated under section 416(c)(1) of the ACWIA that states: "...the Attorney General shall notify, on a quarterly basis, the Committees on the Judiciary of the United States House of Representatives and the Senate of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act during the preceding 3-month period." Furthermore, as described in Section 416(c)(3), this report "...shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act (as added by section 415 of this title)."

This report covers the first quarter of fiscal year 2001. As explained in our letter to the House and Senate Judiciary Committees dated March 9, 2000, reports have not been provided since the third quarter of fiscal year 1999 due to data discrepancies that now have been corrected.

This report is presented in two parts: Part I provides information on the number of aliens granted H-1B status while Part II presents information on the number of employers exempt from the nonimmigrant H-1B petition fee.

Pursuant to section 214(c) of the INA, U.S. employers using the H-1B program are required to file a petition with the Attorney General on behalf of an alien worker (the beneficiary). The petition must be approved before a visa is granted or an alien is provided nonimmigrant status. Accordingly, the petition data is used to inform this report.

Part I. The number of aliens provided status under section 101(a)(15)(H)(i)(b) of the INA.

Table 1 provides information on the number of H-1B petitions filed by employers in the first quarter of fiscal year 2001. This table also provides information on the number of H-1B petitions approved by the INS during this period. Petitions filed in a particular quarter may not be adjudicated in that same quarter.

U.S. employers file the petition with the INS to sponsor an alien worker as an H-1B nonimmigrant. This petition may be filed to sponsor an alien for an initial period of H-1B employment or to extend the authorized stay of an alien as an H-1B nonimmigrant. Additionally, an employer may file the petition to sponsor an alien who currently has status as an H-1B nonimmigrant working for another employer or to seek an amendment of a previously approved petition. In the case of a petition to amend a previously approved petition, there may be no corresponding request to extend the authorized stay of the beneficiary. For example, an employer may file an amended petition notifying the INS of a different location where the beneficiary will be employed or a material change in the beneficiary’s job duties. Therefore, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B.

Approximately 12,800 petitions were both filed and approved during the first quarter of fiscal year 2001.

**TABLE 1. NUMBER OF H-1B PETITIONS FILED AND/OR APPROVED
IN FISCAL YEAR 2001 AS OF DECEMBER 31, 2000**

For Fiscal Year 2001:	As of December 31, 2000
Petitions filed	128,783
Petitions approved	57,962

Part II. The number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p) (1) of the INA.

The ACWIA added section 214(c)(9)(A) of the INA to require that the Attorney General impose a fee on an employer filing a petition initially to grant an alien status as H-1B; to extend the nonimmigrant stay of an alien as an H-1B (unless the employer previously has obtained an extension for such alien); or to obtain authorization for an alien having such status to change employers. The fee, effective December 1, 1998, and, as amended, authorized until September 30, 2003, was increased from \$500 to \$1,000 with passage of Public Law 106-311. The increased fee was effective on December 18, 2000.

Public Law 106-311 amended section 214(c)(9) of the INA to specify which employers are exempt from the fee, including those employers described under section 212(p)(1) of the Act. Additionally, the INS does not require the fee for certain administrative reasons. To summarize, these exemptions apply to employers that are:

- institutions of higher education defined in section 101(a) of the Higher Education Act of 1965;
- non-profit organizations or entities related to or affiliated with an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965;
- non-profit and Government research organizations;
- non-profit entities engaging in established curriculum-related clinical training of students registered at any such institution;
- primary or secondary education institutions;
- filing a second or subsequent request for an extension of stay for a particular alien;
- filing a petition to correct an INS error; or
- filing an amended petition that does not contain a request to extend the nonimmigrant stay of the alien beneficiary.

Table 2 shows the number of petitions that were filed in first quarter, fiscal year 2001 and the number exempted from the fee. Table 3 shows the same information for all petitions approved during the same period. Approximately 12,800 petitions are included in both tables indicating the petitions were both filed and approved in the first quarter, fiscal year 2001. As explained in Part I, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B since a single alien may be the beneficiary of multiple petitions.

**TABLE 2. NUMBER OF H-1B PETITIONS FILED IN FISCAL YEAR 2001
BY REASON OF EXEMPTION FROM FEE AS OF
DECEMBER 31, 2000**

For Fiscal Year 2001:	As of December 31, 2000
TOTAL PETITIONS FILED*	128,783
Without any fee exemptions	119,022
With at least one exemption	9,215
Missing exemption data	547
REASON FOR EXEMPTION	
Employer is an institution of higher education	4,058
Employer is an organization or entity related to, or affiliated with an institution of higher education	1,894
Employer is a nonprofit research organization or a government research organization	1,288
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	1,799
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,922
Employer is filing an amended petition with second (or higher) extension of stay for an H-1B nonimmigrant	87
Employer is a primary or secondary education institution	303
Employer is a non-profit entity engaged in clinical training	295

* Total petitions filed in the first quarter is one fewer than the sum of the three sub-categories because one petition filed had at least one fee exemption **and** missing exemption data.

**TABLE 3. NUMBER OF H-1B PETITIONS APPROVED IN
FISCAL YEAR 2001 BY REASON OF EXEMPTION FROM FEE AS OF
DECEMBER 31, 2000**

For Fiscal Year 2001:	As of December 31, 2000
TOTAL PETITIONS APPROVED*	57,962
Without any fee exemptions	52,203
With at least one exemption	5,741
Missing exemption data	19
REASON FOR EXEMPTION	
Employer is an institution of higher education	2,944
Employer is an organization or entity related to, or affiliated with an institution of higher education	1,164
Employer is a nonprofit research organization or a government research organization	880
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	1,006
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,068
Employer is filing an amended petition with second (or higher) extension of stay for an H-1B nonimmigrant	40
Employer is a primary or secondary education institution	150
Employer is a non-profit entity engaged in clinical training	147

* Total petitions approved in the first quarter is one fewer than the sum of the three sub-categories because one petition approved had at least one fee exemption **and** missing exemption data.